

FIRST AMENDMENT TO COMMERCIAL LEASE
Northwest and Independence, Oklahoma City, OK Store 9723

THIS FIRST AMENDMENT TO COMMERCIAL LEASE ("Amendment") is made this 4th day of May, 2015 (the "Effective Date", which shall be the date of full execution by both parties), by and between **B.R. Midland Center, LLC**, a Delaware limited liability company, as successor-in-interest to Midland Capital, LLC, an Oklahoma limited liability company ("Landlord") and **Starbucks Corporation**, a Washington corporation ("Tenant"). Landlord and Tenant are sometimes hereinafter referred to as the "Parties" collectively or a "Party" individually.

RECITALS

This Amendment is made with reference to the following facts:

- A. The Parties entered into that certain Commercial Lease dated December 9, 2004 (the "Lease"), covering certain commercial property containing approximately 2,000 square feet of floor area located at 3301 Northwest Expressway, Suite A, in Oklahoma City, Oklahoma (the "Premises") which Premises is located in a shopping center commonly known as Midland Center (the "Shopping Center").
- B. On January 20, 2006, Midland Capital, LLC, assigned all of its rights, title and interest to the Property to Landlord.
- C. The Initial Term of the Lease will expire on September 30, 2015.
- D. The Parties now wish to amend the Lease to, among other things, extend the Term of the Lease and provide Tenant an early termination right, all upon the terms, covenants and conditions hereinafter set forth.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises and conditions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, as of the Effective Date the Parties agree as follows:

- 1. Term. Pursuant to Section 2.4.1 of the Lease, Tenant hereby exercises its first and second options to extend the Term of the Lease for an additional ten (10) year period commencing on October 1, 2015 and expiring September 30, 2025 (the "First Extension Term" and the "Second Extension Term", together the "Extended Term"). Base Rent during the Extended Term shall be as set forth in Paragraph 3 below.
- 2. Extension. Pursuant to Section 2.4.1 of the Lease, Tenant has two (2) remaining five (5) year options to extend the Term of the Lease. The "Third Extension Term" shall commence on October 1, 2025 and expire on September 30, 2030 and the "Fourth Extension Term" shall commence on October 1, 2030 and expire on September 30,

2035. Furthermore, Landlord hereby grants Tenant the option to extend the Term of the Lease for two (2) additional, consecutive five (5) year periods upon the same terms and conditions as set forth in the Lease unless otherwise modified herein. The "Fifth Extension Term" shall commence on October 1, 2035 and expire on September 30, 2040 and the "Sixth Extension Term" shall commence on October 1, 2040 and expire on September 30, 2045. The extension terms shall collectively be referred to as "Extension Terms". Base Rent with respect to the Extension Terms, if said options are exercised by Tenant, shall be as set forth in Paragraph 3 below. Landlord and Tenant acknowledge and agree that, upon the full execution of this Amendment by the Parties, there are four (4) remaining options to extend the Term of the Lease.

3. Base Rent. Section 3.1 of the Lease is hereby amended to specify the following as Base Rent payments for the Extended Term, and, to the extent exercised by Tenant, the remaining Extension Term options, respectively:

<u>Extended Term:</u>			
<u>Lease Years</u>	<u>\$ Per Square Foot Per Year</u>	<u>Monthly Installment</u>	<u>Annual Rent</u>
10/1/2015 – 9/30/2020	\$52.00	\$8,667.67	\$104,000.00
10/1/2020 – 9/30/2025	\$53.00	\$8,833.33	\$106,000.00
<u>Extension Term Options:</u>			
<u>Lease Years</u>	<u>\$ Per Square Foot Per Year</u>	<u>Monthly Installment</u>	<u>Annual Rent</u>
10/1/2025 – 9/30/2030	\$58.32	\$9,720.00	\$116,640.00
10/1/2030 – 9/30/2035	\$64.20	\$10,700.00	\$128,400.00
10/1/2035 – 9/30/2040	\$70.68	\$11,780.00	\$141,360.00
10/1/2040 – 9/30/2045	\$77.75	\$12,958.33	\$155,500.00

4. Tenant's Right of Early Termination. Section 19 of the Lease is hereby deleted in its entirety and amended to read as follows:

19. Tenant's Right of Early Termination. Notwithstanding anything contained in the Lease to the contrary, Tenant, in its sole discretion, shall have the right to terminate this Lease as of the Early Termination Date. The "Early Termination Date" shall be September 30, 2022. In order to exercise this early termination right, Tenant must give Landlord written notice no less than two hundred seventy (270) days before the Early Termination Date. Upon the Early Termination Date, Tenant shall be fully and forever released and discharged from any and all obligations, covenants or liabilities of whatsoever kind or nature in law or equity or otherwise arising out of or in connection with this Lease or any other agreements by and between Landlord and Tenant except for any obligation or liability that accrued before the Early Termination Date. Should Tenant elect to terminate this Lease as

permitted under this Section 19, Tenant shall pay Landlord, on or prior to the Early Termination Date a termination fee (the "Termination Fee") equal to the total of the following amounts: (a) four (4) months of Base Rent payable as of the date immediately preceding the Early Termination Date, such sum being Thirty Five Thousand Three Hundred Thirty Three and 32/100 Dollars (\$35,333.32) and (b) the then-unamortized portion of the leasing fee.

5. Electronic Funds Transfer. Landlord acknowledges and agrees that Tenant, at Tenant's option, shall have the right to pay amounts due under the Lease to Landlord via electronic funds transfer, and that Landlord shall cooperate with Tenant, if necessary to establish that manner of payment by Tenant.

6. Miscellaneous.

6.1 Capitalized Terms/Definitions. Each capitalized term used in this Amendment and not defined herein shall be deemed to have the same meaning ascribed to it in the Lease.

6.2 Continuing Effect. Except as specifically provided in this Amendment, the provisions of the Lease shall remain unchanged and in full force and effect. In the event of a conflict between the Lease and this Amendment, this Amendment shall control.

6.3 Authority. Each person executing this Amendment on behalf of a Party represents and warrants that it has the full power, authority, and legal right to execute and deliver this Amendment on behalf of such Party and that this Amendment constitutes the legal, valid and binding obligations of such Party, its heirs, representatives, successors and assigns, enforceable against such Party or Parties in accordance with its terms.

6.4 Approvals. Landlord warrants and represents to Tenant that Landlord has obtained any approvals from any third parties, including lender(s), that are necessary to make this Amendment enforceable against Landlord and all such third parties, their heirs, representatives, successors and assigns. Landlord shall defend, indemnify and save harmless Tenant from and against all losses, claims, demands, damages, liabilities, costs and attorneys' fees resulting from a breach of, or inaccuracy in, any of the representations and warranties set forth in this section.

6.5 Counterparts. To facilitate execution of this Amendment, this Amendment may be executed in one or more counterparts as may be convenient or required, and an executed copy of this Amendment delivered electronically by facsimile or e-mail shall have the effect of an original, executed instrument. All counterparts of this Amendment shall collectively constitute a single instrument; but, in making proof of this Amendment it shall not be necessary to produce or account for more than one such counterpart executed by each Party hereto. It shall not be necessary for the signature of, or

on behalf of, each Party hereto, or that the signature of all persons required to bind any such Party appear on each counterpart of this Amendment.

6.6 No Construction Against Draftsman. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any provision of this Amendment or that such provisions have been drafted on behalf of said Party.

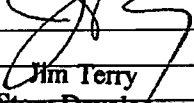
IN WITNESS WHEREOF, the Parties have duly executed this Amendment effective as of the day and year set forth above.


TENANT:

LANDLORD:

STARBUCKS CORPORATION,
a Washington corporation

B.R. MIDLAND CENTER, LLC,
a Delaware limited liability company

By: 
Name: Jim Terry
Its: vp, Store Development
Real Estate & Facilities
Starbucks Corporation

By: 
Name: Bernard Petersen
Its: Manager

COMMERCIAL LEASE
(Single-Tenant Building)

December 9

THIS COMMERCIAL LEASE (the "Lease"), is made and entered into as of _____, 2004, by and between Midland Capital, LLC, an Oklahoma limited liability company ("Landlord") and Starbucks Corporation, a Washington corporation ("Tenant").

1. **PREMISES.** Landlord is the owner of a building to be constructed at 3301 Northwest Expressway, Oklahoma City, Oklahoma (the "**Building**"), which Building is part of a shopping center situated upon the real property legally described in **Exhibit A** attached hereto (herein the "**Shopping Center**") and by this reference incorporated herein. In consideration of the mutual promises, covenants and conditions herein set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property described as Parcel III on **Exhibit A** hereto (the "**Property**") and the Building containing approximately 2,000 square feet of floor area as shown by cross-hatching on **Exhibit B** attached hereto and by this reference incorporated herein (collectively the "**Premises**"). In addition, Tenant shall have the right to operate a drive-through facility containing one drive-through lane as shown on **Exhibit B**.

2. **TERM.**

2.1 **Term.** The initial term of this Lease shall be for ten (10) years, commencing on the Rent Commencement Date (as defined in Section 3.1 below), and ending on the last day of the month in which the 10th anniversary of the Rent Commencement Date occurs (the "**Expiration Date**"), unless sooner terminated or extended as provided herein (the "**Initial Term**"). If the Expiration Date of the Lease occurs after September 30, and prior to the last day of the succeeding February, the term of this Lease shall automatically extend until the last day in the succeeding February. Promptly after the Rent Commencement Date, Landlord and Tenant shall execute a memorandum stating the actual Commencement Date (as defined in Section 2.2. below), Rent Commencement Date and Expiration Date. For purposes of this Lease, the word "**Term**" shall mean the Initial Term and any Extension Term (as defined in Section 2.4 below).

2.2 **Delivery.** The Lease shall commence upon delivery of the Premises by Landlord and acceptance of the Premises by Tenant (the "**Commencement Date**"). Tenant shall not be deemed to have accepted possession of the Premises until each of the following conditions has been satisfied: (a) Landlord has completed Landlord's Work (as defined in Section 4.2); (b) Landlord and Tenant have executed and delivered a written notice of delivery and acceptance of the Premises in the form attached hereto as **Exhibit D**; (c) Landlord has delivered a fully executed copy of this Lease to Tenant; and (d) Landlord has delivered to Tenant, and Tenant has approved, plans for the Building including, but not limited to, (i) exterior elevations for the Building improvements, (ii) grading, paving, parking and lighting plans, and (iii) mechanical, electrical, structural and plumbing components to be designed in compliance with the specifications set forth in **Exhibit C** attached hereto (collectively, the "**Plans**"). Landlord shall deliver possession of the Premises to Tenant no earlier than sixty (60) days and no later than seventy five (75) days after Landlord notifies Tenant of the anticipated date that the Premises will be ready for occupancy (the "**Scheduled Delivery Date**").

2.3 **Lease Year.** For the purpose of this Lease, the term "**Lease Year**" shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term, provided that if the Term commences on other than the first day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first Lease Year of the Term.

2.4 **Extension.**

2.4.1 Provided that no event of default by Tenant then exists and is continuing beyond any applicable grace period, Tenant shall have the option to extend the term of this Lease for four (4) consecutive five (5) year period(s) (each an "**Extension Term**"), upon the same terms and conditions as contained in this Lease. The rent for each Extension Term shall be as set forth in Article 3 below. To exercise an extension option, Tenant shall give Landlord written notice at least ninety (90) days prior to the then-current Expiration Date ("Tenant's

Extension Notice). Tenant's Extension Notice shall be effective to extend the Term of the Lease without further documentation except as expressly provided in Section 2.4.2 below.

2.4.2 At any time after Tenant has exercised its option to extend this Lease, Landlord and Tenant, upon request of either, will sign and acknowledge a written memorandum evidencing Tenant's exercise of the option and stating the date to which such Extension Term will extend.

3. RENT.

3.1 **Base Rent.** Tenant shall pay to Landlord at the address stated herein, or to such other person or at such other place as Landlord may designate in writing, rent as follows ("**Base Rent**"):

Lease Years	\$ Per Square Foot Per Year	Monthly Installment	Annual Rent
1-5	\$46.50	\$7,750.00	\$93,000.00
6-10	\$51.15	\$8,525.00	\$102,300.00
Extension Option			
11-15	\$56.27	\$9,378.33	\$112,540.00
16-20	\$61.89	\$10,315.00	\$123,780.00
21-25	\$68.08	\$11,346.67	\$136,160.00
26-30	\$74.88	\$12,480.00	\$149,760.00

Tenant shall commence to pay Base Rent and all other charges hereunder on the date (the "**Rent Commencement Date**") that is one hundred twenty (120) days after the earlier of : (i) the date that Tenant accepts possession of the Premises as set forth in Section 2.2 hereof, or (ii) the date that Tenant receives all permits, variances and governmental approvals necessary to construct and operate Tenant's store in the Premises pursuant to Article 17 hereof, and shall continue to pay Base Rent in monthly installments on or before the first day of every month thereafter during the Term. Rent for any period during the Term less than one calendar month shall be prorated on a daily basis based on a three hundred sixty-five (365) day year.

4. CONDITION OF THE PREMISES, POSSESSION AND TENANT ALLOWANCE.

4.1 **Condition of the Premises.** Landlord represents and warrants that, as of the Commencement Date, Landlord's Work (as defined in Section 4.2 below) and all parking, sidewalks and driveways, and all structural parts of the Building including, without limitation, the foundation, roof, roof membrane and roof system, exterior walls, plumbing, electrical and other mechanical systems (a) will meet and comply with all federal, state, and local laws, ordinances and regulations and all handicapped accessibility standards for the disabled, including, without limitation, those promulgated under the Americans With Disabilities Act ("**ADA**"), and (b) will be seismically and otherwise sound and in good, workable and sanitary order, condition, and repair at the time of delivery of the Premises to Tenant. Landlord shall correct any latent defects promptly after Tenant notifies Landlord of any such defect. Landlord represents and warrants that it has disclosed to Tenant any conditions or restrictions, including, without limitation, environmental contamination, restrictions on utilities or exclusive use restrictions within Landlord's knowledge that would adversely affect Tenant's store design, permitting, construction and use as contemplated by this Lease.

4.2 **Landlord's Obligations.** Landlord shall complete all items described on **Exhibit C** attached hereto and by this reference incorporated herein and any work necessary to bring the Building into the condition required under Section 4.1 ("**Landlord's Work**") at its sole cost and expense in a good and workmanlike manner before delivering the Premises to Tenant. Landlord's Work shall also include obtaining all permits and/or governmental approvals for the construction of the site improvements for and operation of Tenant's drive thru facility as described on **Exhibit C**. Landlord shall notify Tenant in writing when the Premises are ready for Tenant's occupancy and Tenant shall arrange promptly to inspect the Premises. At the time of Tenant's inspection, Landlord shall demonstrate all of Landlord's Work including all mechanical systems of the Premises. Tenant shall deliver to Landlord a written punchlist of all incomplete or faulty items of construction or mechanical installation, and any necessary mechanical adjustments and finish work needed to bring the Premises into the condition required

under this Article. Landlord shall substantially repair all punchlist items prior to Tenant's acceptance of the Premises, or if Tenant chooses to accept delivery of the Premises prior to completion, within thirty (30) days of the date Tenant accepts the Premises.

If the Building is not in the condition required under this Article on the Scheduled Delivery Date, then Tenant may, at its option, either (a) delay acceptance of possession until the Premises is in the condition required under this Article and pursue its remedies under Section 4.3; or (b) accept possession of the Premises and complete all work necessary to bring the Premises into the required condition. If Tenant elects to proceed under the foregoing subsection (b), then Landlord shall reimburse Tenant for the actual cost of such work, plus an administrative surcharge of fifteen percent (15%) to compensate Tenant for its employees' time, within thirty (30) days of receipt of an invoice for such sums. Tenant's and its contractor's determination of the cost of such work shall be final and binding on Landlord and Landlord acknowledges that Landlord can control the cost by performing the work under this Article in a timely manner. If Landlord does not reimburse Tenant as required by this Section, then Tenant may offset such sum against Base Rent and all other charges until such sum has been fully recouped.

4.3 Delay in Delivery of Possession. Tenant is entitled to possession of the Premises on the May 31, 2005 (the "Construction Start Date"). Landlord acknowledges that Tenant intends to start construction of Tenant's improvements on the Construction Start Date, and that a delay in delivery of the Premises beyond such date will cause Tenant to suffer certain losses which are difficult to quantify including, by way of illustration and not of limitation, lost profits, construction delay costs and employee wages. If the Commencement Date does not occur within fourteen (14) days of the Construction Start Date and such failure is because (a) the Premises are not vacant; (b) Landlord has not completed work to be done by Landlord to bring the Premises into the condition required by this Lease; or (c) any reason within the control of Landlord (and Landlord's financing shall be deemed to be within Landlord's control), its agents or contractors, then Tenant shall be entitled to two (2) days of additional free rent (beyond the one hundred twenty day period for Tenant's build out as set forth above) for each day of delay from the Construction Start Date until Landlord delivers the Premises in accordance with the provisions hereof. Landlord and Tenant agree that the foregoing sum is their best estimate of the daily damages, including but not limited to lost sales that Tenant will incur as a result of Landlord's failure to deliver the Premises. If the Commencement Date does not occur within three (3) months of the Scheduled Delivery Date, Tenant, at its option, may terminate this Lease upon written notice to Landlord. If Tenant elects to terminate this Lease, Landlord shall reimburse Tenant for all of Tenant's expenses incurred in connection with this Lease, including, without limitation, site selection and lease negotiation costs and expenses (including the allocated cost of in-house personnel). Landlord shall also return all monies previously deposited by Tenant, if any.

4.4 Tenant Allowance. In addition to Landlord's obligations under Sections 4.1 and 4.2 above, Landlord shall provide Tenant with an improvement allowance in the amount of Sixty Thousand Dollars (\$60,000) (the "Allowance") which shall be paid in full to Tenant within ten (10) business days of Tenant's opening for business in the Premises. Landlord and Tenant agree that the Allowance offsets the cost of the flooring, ceiling, and other work described on Exhibit C that is Tenant's responsibility to install in the Premises, all of which, upon termination of this Lease, shall become the property of Landlord and remain in the Premises. If Landlord has not paid Tenant the Allowance within thirty (30) days after Tenant opens for business in the Premises, then Tenant may, in addition to any other remedies and at Tenant's option, offset the unpaid amount and a Fifty Dollar (\$50.00) per month administrative fee, against Base Rent and all other charges until the Allowance is fully offset.

4.5 Independent Measurement of Floor Area. At any time within six (6) months of the delivery of the Premises to Tenant, Tenant may engage an independent certified architect or surveyor to measure the actual floor area of the Premises (the "Floor Area"). Inasmuch as the Tenant is the only occupant of the Building, tenant's architect or surveyor shall determine the Floor Area by measuring from the outside of any exterior walls to the outside of any exterior walls. If the architect's or surveyor's measurement of the Floor Area is less than the floor area of the Premises set forth in Article 1 above by three percent (3%) or more, Base Rent and Tenant's Pro Rata Share (as defined in Section 12.2 below) shall be proportionally reduced. If the variance is less than three percent (3%), Landlord and Tenant shall make no adjustments to the Lease.

5. USE.

5.1 Use. Tenant may use and occupy the Premises and drive-through lane for a coffee store, or any other lawful retail or restaurant use. Landlord acknowledges that Tenant may use the Premises to accept returns of merchandise not purchased from Tenant.

5.2 Compliance with Law. During the Term, Tenant, at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Premises pertaining to (a) the physical condition of any improvements constructed by Tenant in the Premises; and (b) Tenant's specific business operations in the Premises. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements or alterations to the Premises or the Building in order to comply with the requirements of this Section. Landlord, at its sole cost and expense, shall comply with all other laws, rules, regulations, and ordinances made by any governmental authority affecting the Premises, Building and/or the Property including, without limitation, all accessibility for the disabled requirements.

5.3 Operations. Tenant shall operate its business in such manner and at such hours as Tenant considers proper in Tenant's business judgment. It is expressly understood and agreed that Tenant makes no representations or warranties, oral or written, as to the level of gross sales it may generate from the Premises or the number of customers that it will bring to the Building.

5.4 Exclusivity. Landlord shall not use or allow any other person or entity (except Tenant) to use any portion of the Property for the sale of (a) freshly ground or whole coffee beans, (b) espresso, espresso-based coffee drinks or coffee-based drinks, (c) tea or tea-based drinks, (d) gourmet, brand-identified brewed coffee, and (e) blended beverages including, without limitation, those containing the following: ice, coffee, espresso, tea, milk, cream, juice and/or fruit. This restriction shall also apply to kiosks and carts.

6. MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1 Tenant's Obligations. Subject to the provisions of Sections 6.2, 6.3 and 9, and except for damage caused by fire or other casualty, whether or not insured or insurable, Tenant, at Tenant's expense, shall keep the Premises in good order and repair, including maintaining all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises, and the store front, doors, and plate glass of the Premises. At Tenant's request, Landlord shall transfer or assign to Tenant all warranties, express or implied, under any contract or subcontracts relating to any improvements or equipment Landlord built or installed within the Premises to serve the Premises exclusively, including, without limitation, the warranty for the HVAC system. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant; or (c) any structural or seismic repairs, improvements or alterations to the Premises or the Building.

6.2 Landlord's Obligations. Except for repairs and replacements to the Premises that Tenant must make under Section 6.1, Landlord shall pay for and make all other repairs and/or replacements to the Premises, the Building and the Shopping Center (including the Common Areas as defined below). Landlord shall, at its sole cost and expense, make the repairs and replacements necessary to maintain the Building and Shopping Center in a condition comparable to other first-class buildings and shopping centers in the Oklahoma City, Oklahoma metropolitan area. Such repairs, replacements and maintenance shall include the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like), foundation, exterior walls, interior structural walls, and all structural components of the Building and Shopping Center. Landlord shall also repair and maintain all parking areas, sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the Shopping Center as a whole and not a particular tenant's premises, and Landlord may allocate the cost of such maintenance equitably among all tenants pursuant to Article 12. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and store fronts (except where maintenance of the same is caused by Landlord's negligence or failure to perform its obligations under this Section). Landlord shall make all repairs under this Section promptly after Landlord learns of the need for such repairs but in any event within thirty (30) days after Tenant notifies

Landlord of the need for such repairs. If Landlord fails to make such repairs within thirty (30) days after Tenant's notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Tenant may, at its option, undertake such repairs and deduct the cost thereof from the installments of Base Rent and Monthly Estimated Rent next falling due. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately, Tenant may immediately undertake such repairs and deduct the cost thereof from the installments of Base Rent and all other charges next falling due.

6.3 Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in broom clean condition, except for ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable.

6.4 Landlord's Rights. If Tenant fails to perform Tenant's obligations under this Article with respect to the Premises only, Landlord may, but shall not be required to, enter upon the Premises, after thirty (30) days prior written notice to Tenant, and put the same in good order, condition and repair, and the reasonable costs thereof shall become due and payable as additional rental to Landlord together with Tenant's next Base Rent installment falling due after Tenant's receipt of an invoice for such costs. Notwithstanding the foregoing, Landlord's rights under this Section shall be subject to Section 23.14.

6.5 Alterations and Additions.

6.5.1 Initial Improvements. Tenant, at Tenant's cost, may install such fixtures and finishes and other initial tenant improvements in the Premises as Tenant deems necessary or desirable for the conduct of Tenant's business therein (the "Initial Improvements"). Tenant shall submit the plans and specifications (the "Plans") for the Initial Improvements to Landlord for Landlord's review and approval of the structural elements. Landlord shall have a period of fourteen (14) days (the "Review Period") to review the Plans. Landlord shall not unreasonably withhold, condition or delay its approval of the Plans. Landlord shall be deemed to have approved the Plans as presented unless, on or before the last day of the Review Period, Landlord has delivered to Tenant a written description of the specific structural items in the Plans that are not acceptable and a description of the specific changes that must be made to the Plans to secure Landlord's approval. Tenant shall either (a) submit modified plans for approval; or (b) terminate the Lease if Landlord's requested revisions are not acceptable to Tenant in its sole discretion. The review and approval process described above shall continue until such time as Landlord has approved the Plans in writing (the "Final Plans") or until the Lease is terminated. Notwithstanding the foregoing, Landlord acknowledges that it is familiar with Tenant's retail operations and agrees that Tenant may build out the Premises consistent with its then current trade dress and standards.

6.5.2 Subsequent Improvements. After the installation of the Initial Improvements, Tenant may make such interior non-structural alterations, improvements and additions to the Premises including, without limitation, changing color schemes, installing new countertops, flooring, wall-covering and modifying the layout of the tenant fixtures, as Tenant deems necessary or desirable without obtaining Landlord's consent. Notwithstanding the foregoing, Tenant shall not make any alterations, improvements, additions or repairs in, on, or about the Premises which affect the structure or the mechanical systems of the Building without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall be deemed to have approved any subsequent improvement proposed by Tenant unless Landlord disapproves of Tenant's proposal in writing within fourteen (14) days of receiving Tenant's proposal and request for consent.

6.5.3 Liens. Before commencing any alterations, additions or improvements using outside contractors, Tenant shall notify Landlord of the expected commencement and completion dates of the work. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises for any labor or material furnished to Tenant or to its agents or contractors; provided, however, that Tenant shall not be required to pay or otherwise satisfy any claims or discharge such liens so long as Tenant, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to Landlord that stay enforcement of such lien.

6.6 Ownership and Removal of Improvements, Fixtures, Equipment and Furnishings.

6.6.1 All personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) which Tenant installs in the Premises ("Tenant's Property") shall remain the property of Tenant. Upon the termination or expiration of the Term, Tenant may remove Tenant's Property from the Premises no later than the termination or expiration date. In addition, Tenant may remove from the Premises all items and structural characteristics installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Premises, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademarks, trade names or copyrights. Tenant shall repair any damage to the Premises or the Building caused by such removal, including patching and filling holes. In no event shall Tenant remove or be required to remove any restrooms, flooring, ceilings, or utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

6.6.2 Any of Tenant's Property not removed from the Premises on the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises (a) any trademark, trade name, millwork, copyrighted floorplan, copyrighted color palette, or sign used by Tenant in the Premises; or (b) any item that is similar to any other item protected by Tenant's intellectual property rights. This provision shall apply under all circumstances, including default by Tenant under this Lease.

7. INSURANCE; INDEMNITY.

7.1 Tenant's Insurance. During the Term of this Lease, Tenant shall obtain and keep in full force and effect, the following insurance which may be provided under blanket insurance policies covering other properties as well as the Premises and shall be maintained with an insurance company with an A.M. Best Company ("Best's") rating of at least A- and a Best's financial performance rating of at least 7. Upon Landlord's request, Tenant will provide Landlord with a certificate(s) evidencing such insurance.

7.1.1 Liability Insurance. Personal injury, bodily injury and property damage insurance, naming Landlord, as well as managing agent upon Landlord's written request, as additional insureds as their interest may appear from time to time, against liability arising out of Tenant's use, occupancy, or maintenance of the Premises and Tenant's outdoor seating area (if any). Such insurance shall include an "each occurrence" limit of not less than One Million Dollars (\$1,000,000) and a general aggregate limit of not less than Two Million Dollars (\$2,000,000). Tenant's insurance shall be primary with respect to any claim arising out of events that occur in the Premises.

7.1.2 Property Insurance. Commercial property form insurance with a special form endorsement providing coverage on a replacement cost basis for Tenant's fixtures, equipment and inventory in the Premises. During the Term, Tenant shall use the proceeds from any such policy or policies of insurance for the repair or replacement of the insured property unless Tenant elects to terminate the Lease under Section 9 hereof. Landlord shall have no interest in any insurance proceeds Tenant receives for Tenant's Property and Landlord shall sign all documents which are necessary or appropriate in connection with the settlement of any claim or loss by Tenant. Tenant's policies shall not be contributing with or in excess of any coverage which Landlord shall carry on the Building.

7.2 Landlord's Insurance. During the Term of this Lease, Landlord shall obtain and keep in full force and effect, the following insurance from an insurance company with a Best's rating of at least A- and a Best's financial performance rating of at least 7. The insurance required to be carried by Landlord under this Section shall be referred to herein as "Landlord's Insurance." Tenant shall be named as additional insured under Landlord's policies and, upon Tenant's request, Landlord will provide Tenant with a copy of the certificate and premium bill evidencing Landlord's Insurance.

7.2.1 Liability Insurance. Bodily injury, personal injury and property damage insurance (to include without limitation contractual liability covering Landlord's obligations under Section 7.5)

insuring against claims of bodily injury or death, personal injury or property damage arising out of or in connection with (a) Landlord's activities upon, in or about the Premises and the Building; or (b) the use or occupancy of the Building with an each occurrence limit of not less than One Million Dollars (\$1,000,000) and a general aggregate limit of not less than Two Million Dollars (\$2,000,000). Landlord's Insurance shall be primary with respect to any claim arising out of events that occur outside the Premises.

7.2.2 Property Insurance. Special Form commercial property insurance insuring the Building (excluding any property which Tenant is obligated to insure under Section 7.1), for the amount of the full replacement of its value as such value may exist from time to time.

7.3 Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Lease. Landlord and Tenant shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

7.4 Indemnification by Tenant. Tenant shall defend, protect, indemnify, and hold Landlord and Landlord's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with any and all third party claims arising out of (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Tenant or Tenant's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease; or (d) the failure of any representation or warranty made by Tenant herein to be true when made. This indemnity does not include the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of this Lease.

7.5 Indemnification by Landlord. Landlord shall defend, protect, indemnify, and hold Tenant and Tenant's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) by or on behalf of any person, entity, or governmental authority occasioned by or arising out of (a) injuries occurring in the Common Areas or any other portion of the Building outside the Premises; (b) any intentional act, or negligence of Landlord or Landlord's agents, employees, or independent contractors; (c) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease; or (d) the failure of any representation or warranty made by Landlord herein to be true when made. This indemnity does not include the intentional or negligent acts or omissions of Tenant or its agents, officers, contractors or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of this Lease.

7.6 Payment of Landlord's Insurance. Landlord intends to procure Landlord's Insurance separately and apart from insurance covering the remainder of the Shopping Center. For each Lease Year, Landlord shall provide Tenant with a copy of the paid insurance statement and Tenant shall reimburse Landlord therefore, as Additional Annual Rent, within thirty (30) days of its receipt of that statement.

8. ENVIRONMENTAL LIABILITY.

8.1 Environmental Law. The term "Environmental Law" means any federal, state, local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

8.2 Hazardous Substance. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by-products; asbestos; and polychlorinated biphenyl.

8.3 Landlord's Covenants. Landlord warrants, represents, covenants and agrees as follows:

8.3.1 To the best of Landlord's knowledge, no Hazardous Substance has been released, discharged or disposed of on, under or about the Premises, the Building, the Shopping Center or the Property (or off-site of the Premises which might affect the Premises or the Building) by any entity, firm or person, or from any source whatsoever.

8.3.2 Landlord shall require each of its employees, agents, contractors, subcontractors, tenants, subtenants, or any other party over whom Landlord has supervision or control or right of the same to comply with all applicable Environmental Laws.

8.3.3 To the best of Landlord's knowledge, (a) there are no underground storage tanks on the Premises, the Building, the Shopping Center or the Property; (b) no underground storage tanks have been removed from the Premises, the Building, the Shopping Center or the Property; (c) there is no asbestos or asbestos containing material in or on the Premises or the Building, and no asbestos or asbestos containing material has been removed from the Premises or the Building; (d) no facilities involving the manufacture or disposal of any Hazardous Substance or the use or storage of more than five hundred (500) gallons of any Hazardous Substance per year, including, without limitation, gasoline stations, automobile repair facilities, dry cleaners, photo developing laboratories, junkyards, landfills, waste treatment storage, disposal, processing or recycling facilities have been located on or adjacent to the Premises, the Building, the Shopping Center or the Property.

8.3.4 Landlord shall give prompt notice to Tenant of: (a) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Premises or the Shopping Center (or off-site of the Premises that might affect the Premises) or related to any loss or injury that might result from any Hazardous Substance; (b) all claims made or threatened by any third party against Landlord or the Premises, the Building, the Shopping Center or the Property relating to any loss or injury resulting from any Hazardous Substance; and (c) Landlord's discovery of any occurrence or condition on the Premises, the Building, the Shopping Center or the Property (or off-site of the Premises that might affect the Premises) that could cause the Premises or any part thereof, to be subject to any restriction on occupancy or use of the Premises under any Environmental Law.

8.3.5 If any Hazardous Substance is deposited, released, stored, disposed, discovered or present in or on the Premises, the Building, the Shopping Center or the Property, Landlord, at Landlord's expense, shall (subject to Tenant's obligations set forth in Section 8.5.1) in a manner that complies with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant during all activities related to remediation. Prior to the Commencement Date, Landlord shall, at its sole cost and expense, remove any asbestos or asbestos containing material from the Premises. If any asbestos is discovered in the Premises during Tenant's inspection of the Premises or construction of its tenant improvements, then Landlord shall promptly remove the asbestos or cause it to be removed at Landlord's sole cost and expense and if the foregoing delays the construction or installation of Tenant's improvements, then the Rent Commencement Date shall be extended for one (1) day for each day of delay.

8.4 Tenant's Use of Any Hazardous Substance. The only Hazardous Substances Tenant may use in its operations are cleaning solutions and other substances as are customarily used in Tenant's business. Tenant will manage such use in accordance with the Environmental Laws. Other than using the foregoing, Tenant does not have direct or indirect responsibility for or authority to manage or control use, transportation, generation or disposal of any Hazardous Substance on the Premises, the Building or the Property.

8.5 Indemnities.

8.5.1 Tenant shall protect, defend, indemnify, and hold harmless Landlord and Landlord's employees, agents, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to undertaking any activity related to any Hazardous Substance ("Claims") directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises or the Building. This indemnity shall survive the termination of this Lease.

8.5.2 Landlord shall protect, defend, indemnify and hold harmless Tenant and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any Claims directly or indirectly related to: (a) a violation of or responsibility under Environmental Laws except that if such Claims are directly related to Tenant's, or Tenant's agents, contractors or employees use, manufacture, storage, release or disposal of a Hazardous Substance on the Premises or the Building; or (b) a breach of any representation, warranty, covenant or agreement contained in this Article. This indemnity shall survive the termination of this Lease. In the event of any governmental or court order concerning Hazardous Substances on the Premises, the Building, the Shopping Center or the Property (not caused by Tenant) that precludes Tenant from reasonable operation of its business on the Premises, Tenant may cease operating and Base Rent and all other charges shall be abated. If such governmental or court order is not resolved within six (6) months, Tenant may terminate this Lease.

9. DAMAGE OR DESTRUCTION.

9.1 Material Damage. If the Premises or the Building is damaged or destroyed by fire or any casualty which cannot, despite diligent, good faith efforts be repaired or restored within one hundred eighty (180) days following the date on which such damage occurs, then Tenant may elect to terminate the Lease effective as of the date of such damage or destruction. Within thirty (30) days after the date of such damage, the parties shall determine how long the repair and restoration will take. After that determination has been made, Tenant shall have a period of thirty (30) days to terminate the Lease by giving written notice to Landlord.

9.2 Repair After Damage. If Tenant does not give notice of Tenant's election to terminate as provided in Section 9.1, then Landlord shall, subject to the provisions of this Section, immediately commence and diligently pursue to completion the repair of such damage so that the Premises and the Building are restored to a condition of similar quality, character and utility for Tenant's purposes, including restoration of all items described on Exhibit C existing in the Premises prior to such damage. In the event that there is no Exhibit C to this Lease, Landlord shall restore the Premises and the Building to a condition of similar quality, character and utility for Tenant's purposes existing in the Premises prior to such damage. Notwithstanding anything contained herein to the contrary, if the Premises and the Building are not repaired and restored within one hundred eighty (180) days from the date of the damage, Tenant may terminate the Lease at any time before Landlord completes the repairs and delivers the restored Premises to Tenant. If Tenant does not so terminate, Landlord shall diligently continue to restore the Premises. In the event of termination, Landlord shall return any prepaid Base Rent and other prepaid amounts to Tenant within thirty (30) days from the date of termination of the Lease.

9.3 Uninsured Damage. If damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, either Landlord or Tenant may terminate this Lease by thirty (30) days written notice to the other of its election so to do and the Lease shall be deemed to have terminated as of such date unless the other party agrees in writing to pay for such repairs or restoration.

9.4 Damage During Final Two Years. If any damage or destruction occurs to the Premises during the last two (2) years of the Initial Term or any Extension Term and the cost to repair the damage exceeds Fifty Thousand Dollars (\$50,000), either Landlord or Tenant may terminate the Lease upon giving the other party thirty (30) days written notice; provided, however, that if Landlord notifies Tenant that it wishes to terminate the Lease, then Tenant may, if it has not already done so, exercise its right to extend the term of this Lease under Section 2.4 whereupon Landlord's election to terminate shall be null and void.

9.5 Landlord's Right to Terminate. If the Building is substantially damaged and Landlord decides to demolish the Building and not to replace it with a similar building, then Landlord may terminate this Lease.

9.6 Abatement of Rent. If Landlord is required to repair or restore the Premises and/or the Building under any provision of this Article and Tenant's use of the Premises is affected, then until Landlord completes such repair or restoration, Base Rent and all other charges payable by Tenant hereunder shall abate based on the degree of impact such damage and repairs have on Tenant's operations within the Premises as measured by the proportionate reduction in Tenant's sales volume.

10. PROPERTY TAXES.

10.1 Definition of "Real Property Taxes". For purposes of this Lease, the phrase "Real Property Taxes" shall include general real estate taxes and assessments payable with respect to the Property that are imposed by any authority having the power to tax any legal or equitable interest of Landlord in the Property; provided, however, that assessments shall be prorated and divided into the maximum number of installments permitted by law and only the current portion shall be included in Real Property Taxes for any Lease Year. Notwithstanding the foregoing, Real Property Taxes shall not include (a) any inheritance, estate, succession, transfer, gift, franchise, or capital stock tax; (b) any income taxes arising out of or related to ownership and operation of income-producing real estate; (c) any excise taxes imposed upon Landlord based upon gross or net rentals or other income received by it; or (d) assessments liened against the Property prior to the Commencement Date.

10.2 Payment of Real Property Taxes. As of the Commencement Date, Landlord represents and warrants that (a) Landlord has paid in full all currently due Real Property Taxes, and (b) Landlord shall pay when due all future Real Property Taxes. The tax parcel number of the Property is set forth on Exhibit A. The Premises are assessed as a separate tax parcel, and for each Lease Year Landlord shall provide Tenant with a copy of the tax statement and Tenant shall pay the Real Property Taxes for the Premises directly to the taxing authority prior to delinquency, provided that the invoice or statement is received at least thirty (30) days prior to such date. Tenant shall have the right to challenge, at its sole expense, the Real Property Taxes and Landlord agrees to provide whatever assistance Tenant may reasonably require. Upon the request of Tenant, and if required to preserve the right to challenge such taxes, Landlord will pay all Real Property Taxes under protest or in such other manner as will preserve the right to challenge such taxes. Tenant may challenge Real Property Taxes if Tenant pays any protested amount to Landlord. Landlord will reimburse Tenant for Tenant's Pro Rata Share of any refund of Real Property Taxes received as a result of any tax contest.

10.3 Personal Property Taxes. Tenant shall pay, prior to delinquency, all personal property taxes assessed against Tenant directly and applicable to its personal property located in the Premises.

11. UTILITIES. Tenant shall pay for all water, gas and electricity used by Tenant during the Term, all of which shall be separately metered to the Premises by proper and sufficient separate meters accessible to Tenant, at Landlord's sole cost and expense. Tenant shall have the right to sufficient utilities and ventilation to support its intended use of the Premises. Landlord acknowledges Tenant has the right to contract with and use its own energy service providers and until it does so Landlord may use its own energy service providers to serve the Premises. Landlord shall not charge Tenant a rate for any utility in excess of the lesser of the rate Landlord pays the supplier of the service or the rate at which Tenant could purchase the services directly through an available supplier. If Landlord reads meters, Landlord shall read meters and submit utility bills to Tenant at least once each calendar quarter. Landlord shall pay all water and sewer connection fees, traffic impact fees and other extraordinary fees that are associated with Tenant's use of the Premises. Without limiting the foregoing, Landlord either (a) represents and warrants that the Building has sufficient electrical capacity to allow Tenant to draw 400 amps of service to the Premises without adverse impact on other occupants or the need for an upgrade in utility service; or (b) covenants to upgrade the electrical capacity of the Building, at Landlord's sole cost and expense, to allow Tenant to draw 400 amps of service to the Premises without adverse impact on other occupants.

12. TENANT'S PRO RATA SHARE OF COMMON AREA OPERATING EXPENSES.

12.1 General Definitions. The term "Operating Expenses" shall mean the reasonable and necessary, out-of-pocket costs and expenses actually paid in any calendar year directly attributable to maintaining, operating, and providing services to and for the Common Areas (as defined below), including the costs of utilities, maintenance, supplies and wages, and subject to the exceptions set forth in Section 12.5. If Landlord calculates Operating Expenses on a Lease Year basis, references in this Article to calendar year shall be changed to Lease Year where appropriate. The term "Common Areas" shall mean all portions of the Shopping Center (excluding the Building) including landscaped areas, parking lots, and sidewalks. The term "Landlord's Insurance" shall have the meanings assigned in Section 7.2.

12.2 Definition of Tenant's Pro Rata Share. Tenant's Pro Rata Share shall be the ratio of the total square feet of floor area of the Premises to the total square feet of leasable area in the Shopping Center (Tenant's "Pro Rata Share"). Tenant's Pro Rata Share is estimated to be Three and 72/100 percent (3.72%). Landlord represents that as of the date hereof, the Shopping Center contains Fifty-One Thousand Seven Hundred Fourteen (51,714) square feet of leasable area, not including the building located on the Property which Landlord has demolished immediately prior to the execution hereof. If the number of square feet of leasable area in the Shopping Center increases during the Term, then Tenant's Pro Rata Share shall be adjusted accordingly. In no event shall Tenant's Pro Rata Share increase.

12.3 Tenant's Payment. Commencing on the Rent Commencement Date, for each calendar year of the Term (prorated for any calendar year falling partially within the Term), Tenant shall pay to Landlord as additional rent Tenant's Pro Rata Share of Operating Expenses (sometimes known as "Annual Additional Rent"). Prior to the Rent Commencement Date and at least thirty (30) days prior to the beginning of each calendar year thereafter, Landlord shall furnish to Tenant a written statement setting forth the following: (a) the amount Landlord estimates Landlord will pay for Operating Expenses (broken down by category) for the then upcoming calendar year; (b) Landlord's estimate of Tenant's Annual Additional Rent; and (c) a calculation of one-twelfth (1/12) of Landlord's estimate of Tenant's Annual Additional Rent ("Monthly Estimated Rent"). Landlord's estimates of Tenant's Annual Additional Rent shall be based on the actual amounts paid for such expenses during the previous year. Tenant shall pay to Landlord the Monthly Estimated Rent beginning on the Rent Commencement Date and on the first day of every successive calendar month thereafter during the Term. Monthly Estimated Rent for a period of less than one month shall be prorated on a daily basis based on a three hundred sixty-five (365) day year. Tenant's Additional Annual Rent, including Tenant's Real Property Taxes pursuant to Article 10 hereof and reimbursement of the cost of Landlord's Insurance as referenced in Section 7.6 hereof, for the first full Lease Year shall not exceed Five Dollars (\$5.00) per square foot of floor area in the Premises. Notwithstanding anything contained herein to the contrary, the portion of Tenant's Annual Additional Rent attributable to Operating Expenses (excluding Landlord's Insurance and Real Property Taxes) for any calendar year shall not exceed one hundred five percent (105%), on a non-cumulative basis, of the portion of Tenant's Annual Additional Rent attributable to the actual Operating Expenses for the previous year.

12.4 Reconciliation. For each calendar year of the Term, within sixty (60) days after the end of each calendar year, Landlord shall furnish to Tenant, at the notice address provided for in Section 25, a statement in reasonable detail, including supportive documentation, setting forth (a) Landlord's actual costs for Operating Expenses for that year by category and amount; (b) the amount of Tenant's Annual Additional Rent; and (c) the sum of Tenant's Monthly Estimated Rent payments made during the year. If the amount of Tenant's Annual Additional Rent exceeds the sum of Tenant's Monthly Estimated Rent payments, Tenant shall pay the deficiency to Landlord within forty-five (45) days after Tenant's receipt of such statement. If the sum of Tenant's Monthly Estimated Rent payments during the year exceeds the amount of Tenant's Annual Additional Rent, Landlord shall pay the excess to Tenant at the time Landlord furnishes the statement, or, if the Term has not expired, may credit the excess toward the payments of Base Rent and Tenant's Monthly Estimated Rent next falling due.

12.5 Exclusions from Operating Expenses. Operating Expenses shall not include: (1) the initial costs of equipment properly chargeable to a capital account using generally accepted accounting principles consistently applied or the original costs of constructing the Building or Shopping Center; (2) the cost of any capital addition or replacement to the Building, Shopping Center or the Property (or reserves therefore); (3) expenses for which the Landlord is or will be reimbursed by another source (excluding Tenant reimbursement for Operating

Expenses), including but not limited to repair or replacement of any item covered by warranty; (4) costs incurred to benefit (or as a result of) a specific tenant or items and services selectively supplied to any specific tenant; (5) expenses for the defense of the Landlord's title to the Property; (6) structural repairs and replacements; (7) depreciation and amortization of the Building or Shopping Center or financing costs, including interest and principal amortization of debts; (8) charitable, lobbying, special interest or political contributions; (9) costs of improving or renovating space for a tenant or space vacated by a tenant; (10) any amounts expended by Landlord to comply with any Environmental Laws; (11) costs to correct original or latent defects in the design, construction or equipment of the Building or Shopping Center; (12) expenses paid directly by any tenant for any reason (such as excessive utility use); (13) any repair, rebuilding or other work necessitated by condemnation, fire, windstorm or other insured casualty or hazard; (14) any expenses incurred (i) to comply with any governmental regulations and rules or any court order, decree or judgment including, without limitation, the Americans with Disabilities Act; or (ii) as a result of Landlord's alleged violation of or failure to comply with any governmental regulations and rules or any court order, decree or judgment; (15) leasing commissions, advertising expenses and other costs incurred in leasing or procuring new tenants; (16) rental on ground leases or other underlying leases; (17) attorneys' fees, accounting fees and expenditures incurred in connection with tax contests or negotiations, disputes and claims of other tenants or occupants of the Building or Shopping Center or with other third parties except as specifically provided in this Lease; (18) cost of the initial stock of tools and equipment for operation, repair and maintenance of the Building or Shopping Center; and (19) amounts billed (directly or indirectly) for salaries, overhead and administrative and/or management fees, office expenses, rent and office supplies which (i) in the aggregate, exceed ten percent (10%) of the total cost of the Operating Expenses; (ii) are duplicative; or (iii) do not represent costs incurred for actual services.

12.6 Records. Landlord shall keep records showing all expenditures incurred as Operating Expenses and Landlord's Insurance for each calendar year for a period of three (3) years following each year, and such records shall be made available for inspection and photocopying by Tenant and/or its agents during ordinary business hours in the city in which the Premises are located.

12.7 Dispute Resolution. Any dispute with respect to Landlord's calculations of Tenant's Annual Additional Rent shall be resolved by the parties through consultation in good faith within sixty (60) days. However, if the dispute cannot be resolved within such period, the parties shall request an audit of the disputed matter from an independent, certified public accountant selected by both Landlord and Tenant, whose decision shall be based on generally accepted accounting principles and shall be final and binding on the parties. If there is a variance of three percent (3%) or more between said decision and the Landlord's determination of Tenant's Annual Additional Rent, Landlord shall pay the costs of said audit and shall credit any overpayment toward the next Base Rent and/or Monthly Estimated Rent payment falling due or pay such overpayment to Tenant within thirty (30) days. If the variance is less than three percent (3%), Tenant shall pay the cost of said audit.

13. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease and shall not let or sublet the whole or any portion of the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Tenant may, without Landlord's consent, sublet all or any portion of the Premises or assign the Lease to the following (each, a "Permitted Transfer"): (a) a parent, subsidiary, affiliate, division or corporation controlling, controlled by or under common control with Tenant; (b) a successor corporation related to Tenant by merger, consolidation, reorganization or government action; or (c) a party that acquires Tenant's leasehold interest in the Premises, provided that such party engages in a lawful retail or restaurant use and provided further that Tenant shall remain liable for financial performance pursuant to the Lease. For the purpose of this Lease, any sale or transfer of Tenant's capital stock, redemption or issuance of additional stock of any class shall not be deemed an assignment, subletting or any other transfer of the Lease or the Premises. Landlord shall not be entitled to any consideration in connection with any assignment. Landlord shall be entitled to receive fifty percent (50%) of the difference between the rent payable hereunder and the rent payable under any sublease, prorated with respect to any portion of the Premises which is so sublet. If Landlord's consent is required for an assignment or sublease, then Landlord's consent shall be deemed to have been given unless Landlord notifies Tenant in writing of the reasons for Landlord's disapproval within fourteen (14) days of receipt of the request. Unless released in writing, Tenant shall remain secondarily liable under the Lease following any assignment or sublease other than a Permitted Transfer; provided, however, that Tenant's obligations may not be enlarged or extended by any act or agreement of any assignee or subtenant. The assigning

party's liability under this Lease shall terminate automatically if the Landlord fails to provide such party with a copy of all default notices to the assignee or subtenant.

14. DEFAULTS; REMEDIES.

14.1 Tenant's Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) The failure by Tenant to make any payment of Base Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) business days after Landlord notifies Tenant in writing of such failure; or

(b) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than the payment of sums due hereunder, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

14.2 Remedies in Default. In the event of any such uncured default, Landlord may, in accordance with procedures required by law, pursue one of the following remedies:

(a) Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall surrender possession of the Premises to Landlord within thirty (30) days after written notice from Landlord to Tenant. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises for uses similar to Tenant's uses, and the Base Rent and Additional Rent as it becomes due hereunder. If Landlord relets the Premises, then any rent or other concessions given to the new tenant shall be prorated evenly throughout the entire term of the new lease; or

(b) Landlord may maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease including the right to recover the Base Rent and Additional Rent as it becomes due hereunder.

With respect to any remedy exercised by Landlord, Landlord shall have an affirmative obligation to obtain another tenant for the Premises at a fair market rental and to otherwise mitigate its damages.

14.3 Landlord Defaults and Remedies. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Landlord: (a) Landlord's failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease required to be done, observed, kept or performed by Landlord, within thirty (30) days after written notice by Tenant to Landlord of said failure (except when the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion); or (b) the failure of any representation or warranty to be true when deemed given hereunder. In the event of a default by Landlord, Tenant, at its option, without further notice or demand, shall have the right to any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity or elsewhere herein: (a) to remedy such default or breach and deduct the costs thereof (including attorneys' fees) from the installments of Base Rent and Additional Rent next falling due; (b) to pursue the remedy of specific performance; (c) to seek money damages for loss arising from Landlord's failure to discharge its obligations under the Lease; and (d) to terminate the Lease. Notwithstanding, after Tenant's acceptance of the Landlord's Work, Tenant shall no longer have a right to terminate this Lease as a result of Landlord's failure to perform Landlord's Work hereunder. Nothing herein contained shall relieve Landlord from its obligations hereunder, nor shall this Section be construed to obligate Tenant to perform Landlord's repair obligations.

15. CONDEMNATION.

15.1 Condemnation of Premises. If any portion of the Premises is taken under the power of eminent domain, or sold by Landlord under the threat of the exercise of said power (the act of which is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession of the condemned portion of the Premises (the "Condemnation Date"). If the entire Premises are condemned, then the Lease shall automatically terminate as of the Condemnation Date. The party who receives the condemnor's notice of intention to take (the "Condemnation Notice") shall immediately give a copy of such notice to the other party.

15.2 Condemnation of the Property. If as a result of any condemnation of the Property or any portion thereof (even though the Premises is not physically affected) (a) the Premises are no longer reasonably suited for the conduct of Tenant's usual business in Tenant's reasonable business judgment, or (b) the number of parking spaces on the Property located within fifty (50) feet of the Premises is reduced by more than two (2) spaces and Landlord does not provide alternative equally accessible parking, or (c) the drive through lane configuration and/or dimensions (including any turning radius or stacking lanes) are materially and negatively affected, then Tenant may terminate this Lease at any time after Tenant receives the Condemnation Notice by giving Landlord thirty (30) days written notice.

15.3 Condemnation of the Building. If a condemnation of any portion of the Building or the Shopping Center (even though the Premises are not physically affected) renders the Building unsuitable for use as a retail Building in either party's reasonable business judgment, then either Landlord or Tenant may terminate this Lease by giving the other at least thirty (30) days written notice.

15.4 Restoration. If this Lease is not terminated as to the whole Premises, (a) it shall remain in full force and effect as to the portion of the Premises remaining, provided the Base Rent and all other charges payable hereunder shall be reduced in the same proportion that the area taken bears to the total area of the Premises prior to taking, and (b) Landlord shall use the condemnation award to restore the Premises and the Building as soon as reasonably possible to a complete unit of the same quality, character and utility for Tenant's purposes existing prior to the condemnation. Notwithstanding anything contained herein to the contrary, if the restoration of the Premises and/or the Building is not commenced within thirty (30) days of Landlord's receipt of the condemnation award or is not completed within one hundred eighty (180) days from the Condemnation Date, then Tenant may terminate this Lease at any time before Landlord completes the restoration. If this Lease is terminated, Landlord shall return any deposits, all prepaid Base Rent and other prepaid sums to Tenant within thirty (30) days of the date of termination of the Lease.

15.5 Award. Landlord and Tenant may each pursue any condemnation award to which it is entitled by applicable law. Tenant may recover from the condemning authority or from Landlord (if Tenant can show that such amount was included in Landlord's award) that portion of any net award or payment attributable to Tenant's Property, including without limitation, the unamortized value of improvements installed in the Premises by Tenant at Tenant's expense based on straight-line depreciation over the Initial Term of the Lease without regard to the condemnation. For the purposes of this Section, a "net" award or payment shall mean the entire award or payment for such taking, less the actual and reasonable expenses incurred in collecting such award or payment.

16. SIGNAGE. Tenant, at its cost, shall have the right to install or place signs, awnings, or other advertising materials in, on or about the Premises or on the Building, including all directional signs, menu boards, and other signage associated with the drive-through facility, to the maximum extent permitted by law; provided that Tenant obtains Landlord's consent (a) as to the method of attaching signs that will be permanently attached to the exterior of the Building; (b) for any awnings; and (c) for the location and design of any pylon signs. Landlord shall not unreasonably withhold, condition or delay its consent. Tenant shall submit plans and specifications for its exterior signs and awnings to Landlord for approval prior to submitting the plans and specifications to the local authorities for permitting. Landlord shall be deemed to have consented to such proposed signs and awnings unless Landlord notifies Tenant in writing of its specific objections within fourteen (14) days of receiving such proposal. All signs and awnings shall be in compliance with all applicable laws, regulations and rules. Landlord shall not vary or change the location or position of Tenant's signage, including but not limited to the position of Tenant's signage

on any pylon or monument signs. Notwithstanding anything contained herein to the contrary, Landlord hereby consents to, and Tenant shall be permitted to install, Tenant's then current trademarked logo, letters, colors and font in Tenant's signage. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to obtain Landlord's consent for any promotional or advertising signs or displays within the interior of the Premises. Landlord shall not allow any signage other than Tenant's to be erected on the exterior walls of the Premises or on the face of the Building or on the roof above the Premises. Landlord agrees to install a monument/pylon sign in the general vicinity of the southeast corner of the Property for Tenant's exclusive use, and Landlord and Tenant shall mutually agree on the design and specifications of the pylon sign.

17. **PERMIT CONTINGENCY.** Tenant's obligations under this Lease are conditioned on Tenant's (or Landlord, in connection with (e) below) obtaining, any permits and/or licenses (including but not limited to conditional use permits, building permits and variances) that are required by applicable laws to enable Tenant legally to (a) construct Tenant's improvements to the Premises in accordance with the Plans; (b) install Tenant's signage on the Premises; (c) conduct its business from the Premises; (d) construct and operate Tenant's outdoor seating; and (e) construct and operate a drive through facility containing one lane. Tenant shall, at Tenant's expense, initiate and diligently pursue each permit and/or license. Landlord shall execute any applications and shall provide Tenant with such further assistance and cooperation as Tenant may require in connection with applications for such permits and licenses. If Tenant does not obtain such permits and licenses on terms satisfactory to Tenant, or if a permit and/or license is not renewed or is revoked during the term of this Lease due to Landlord's actions, Tenant shall have the right to terminate this Lease and if due to Landlord's actions, to pursue such other rights and remedies as may be available at law or in equity. Thereafter, neither party shall have any rights or liabilities under this Lease, and Landlord shall return any deposits and prepaid amounts to Tenant, if any. Tenant shall vacate the Premises within thirty (30) days after exercising the option to terminate as herein provided.

18. **OUTDOOR SEATING.** If such seating is permitted by the local authorities, Tenant may provide outdoor seating for its customers on property owned by Landlord adjacent to the Premises (the dimensions and location of such area shall be agreed upon by Landlord and Tenant) at any time during the Term of this Lease at no additional rental. Tenant, at its cost, shall comply with all relevant state, municipal or local laws, regulations, rules or ordinances with respect to outdoor seating, and obtain all necessary permits or licenses for the same. Tenant shall maintain the outdoor seating area exclusively serving its customers in a reasonably clean and neat fashion.

19. Intentionally Deleted

20. **TENANT'S USE OF COMMON AREAS.** Tenant shall have the right to use any and all appurtenances and easements benefiting the Premises and the Building, along with sufficient Common Areas and parking to support its intended use of the Premises, including such portions as are necessary for Tenant's operation of the drive-through facility, including necessary stacking lanes. In addition to the foregoing, Tenant shall have the right of access to such portions of the Building outside the Premises as are necessary to enable Tenant to exercise its rights under this Lease. Landlord shall not allow any permanent or temporary kiosk, cart, or other obstruction to be constructed or placed on the Property within one hundred fifty (150) feet of the Premises. Any changes, additions or alterations to the Premises, the Property or the Building shall not (a) impair access to, visibility of or frontage of the Premises; (b) materially affect the conduct of Tenant's customary business therein; or (c) detract from Tenant's signage, create confusion regarding the business conducted in the Premises, or adversely affect the presentation of Tenant's exterior signage and storefront. In the event of any such interference, the Base Rent shall be equitably abated based on the degree of interference with Tenant's business.

21. **PARKING AND ACCESS.** Landlord shall provide all necessary parking for Tenant's employees and customers (and Landlord will apply for and obtain all variances) needed to meet all code and permitting requirements at no expense to Tenant. Landlord shall not vary or permit to be varied the existing means of ingress and egress to the Building and the Property, and Landlord shall provide reciprocal access rights between the Building and the Shopping Center. Landlord shall not reduce the number of parking spaces below that which is required by law for Tenant to maintain its permit to use and occupy the Premises or realign the parking spaces in a manner that makes them substantially less accessible to the Premises.

22. **TRASH REMOVAL.** Landlord shall provide a lawful location on the Property as indicated on **Exhibit B** attached hereto, enclosed if required by code and convenient to the Premises, for a three or four cubic-yard trash container and recycling bins for trash disposal and recycling exclusively for Tenant's use.

23. **GENERAL PROVISIONS.**

23.1 **Estoppel Certificate.** Tenant shall, no more than twice in any Lease Year and upon not less than thirty (30) days prior written notice from Landlord, execute, acknowledge and deliver to any prospective purchaser or mortgagee, or to Landlord on such party's behalf a statement in writing on Tenant's standard form or on such other form as is acceptable to Tenant, (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) stating the date to which the Base Rent and other charges are paid and the amount of any security deposit held by Landlord, if any; and (c) acknowledging that there are not, to the actual knowledge of the person executing such certificate, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Such certificates shall not affect, prejudice or waive any rights or remedies of Tenant against Landlord.

23.2 **Landlord's Interests.** Landlord represents and warrants to Tenant that as of the Commencement Date, (a) Landlord owns and holds fee title in and to the Building, the Premises and the Property and that no other signatories of Landlord are required to enable Landlord to enter into an enforceable lease with Tenant; (b) the real property identified on **Exhibit A** contains the Premises described in Section 1; (c) there are no encumbrances, liens, agreements, covenants in effect that would limit Tenant's rights hereunder or increase Tenant's obligations hereunder and Landlord covenants that it will not enter into any that do so; and (d) Landlord is unaware of any impending condemnation plans, proposed assessments or other adverse conditions relating to the Property. The term "Landlord" as used herein shall mean only the owner or owners, at the time in question, of the fee title (or a tenant's interest in a ground lease) of the Premises. In the event of an assignment or transfer of this Lease by Landlord for other than security purposes, Landlord shall cause its assignee or transferee to assume the provisions of this Lease and Landlord shall deliver notice of such assignment or transfer and a copy of the effective instrument of transfer to Tenant within fifteen (15) days after the date of transfer. Tenant shall be entitled to continue to pay rent and give all notices to Landlord until Tenant has received the foregoing from Landlord. Landlord shall deliver all funds in which Tenant has an interest, including but not limited to Tenant's security deposit, if any, to Landlord's purchaser or assignee. From and after a sale of the Premises or the Building, Landlord shall be released from all liability toward Tenant arising from this Lease because of any act, occurrence or omission of Landlord's successors occurring after the transfer of Landlord's interest in this Lease, provided Landlord's purchaser or assignee expressly assumes Landlord's duties and covenants under this Lease. Nothing herein shall be deemed to relieve Landlord of any liability for its acts, omissions or obligations occurring or accruing up to and including the date of such transfer.

23.3 **Authority.** Each of Landlord and Tenant hereby represents and warrants that this Lease has been duly authorized, executed and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

23.4 **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

23.5 **Time of Essence.** Time is of the essence to the parties executing this Lease.

23.6 **Interpretation.** Article and section headings are not a part hereof and shall not be used to interpret the meaning of this Lease. This Lease shall be interpreted in accordance with the fair meaning of its words and both parties certify they either have been or have had the opportunity to be represented by their own counsel and that they are familiar with the provisions of this Lease, which provisions have been fully negotiated, and agree that the provisions hereof are not to be construed either for or against either party as the drafting party.

23.7 **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. This Lease

may be modified only in writing, signed by the parties in interest, at the time of the modification. Landlord specifically acknowledges that Tenant's employees at the Premises do not have authority to modify the Lease or to waive Tenant's rights hereunder.

23.8 Waivers. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of Landlord or Tenant by the person to whom notices are to be addressed.

23.9 Recording. Landlord or Tenant may record a short form or memorandum of Lease at its own expense. At Tenant's request, the parties shall execute a memorandum of Lease in recordable form giving notice of such nonmonetary terms as Tenant may reasonably request, including Tenant's exclusivity and option rights. If Tenant exercises such option, upon termination or expiration of the Lease, Tenant shall, at its sole expense, remove such recorded memorandum from title records.

23.10 Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term, with or without the consent of Landlord, such occupancy shall be a tenancy from month-to-month at a rental in the amount of the Base Rent payable in the last month of the Term, plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancies.

23.11 Cumulative Remedies. Except where otherwise expressly provided in this Lease, no remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

23.12 Binding Effect; Choice of Law. The Lease shall be binding upon and benefit the parties, their personal representatives, successors and assigns. The Lease shall be governed by the laws of the state where the Premises are located.

23.13 Subordination, Nondisturbance and Attornment. This Lease shall be subordinate to all existing and future mortgages and/or deeds of trust on the Premises, the Building or the Property, and Tenant agrees to subordinate this Lease to any future mortgage or deed of trust and to attorn to Landlord's successor following any foreclosure, sale or transfer in lieu thereof; provided that the mortgagee, transferee, purchaser, lessor or beneficiary ("Landlord's Successor") agrees in a written instrument in form and substance satisfactory to Tenant that Tenant's use or possession of the Premises shall not be disturbed, nor shall its obligations be enlarged or its rights be abridged hereunder by reason of any such transaction. Notwithstanding any foreclosure or sale under any mortgage or deed of trust (or transfer by deed in lieu thereof), this Lease shall remain in full force and effect.

23.14 Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises upon seventy-two (72) hours prior written notice for the purpose of inspecting the same, showing the same to prospective purchasers or lenders, and making such alterations, repairs, improvements or additions to the Premises or to the Building as Landlord deems necessary or desirable. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Tenant shorter notice in any manner that is practicable under the circumstances. Landlord may, at any time, place on or about the Premises an ordinary "For Sale" sign, and Landlord may at any time during the last sixty (60) days of the Term, place on or about the Premises an ordinary "For Lease" sign. Any such sign shall be no larger than two feet by two feet (2' x 2'). When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Tenant's use, business or operations on the Premises or obstruct the visibility of or access to the Premises. In the event of substantial, material or unreasonable interference, the Base Rent and additional rent all shall be equitably abated if the interference continues for more than twenty four (24) hours. In the event such interference shall continue for longer than six (6) months, Tenant shall have the option to terminate this Lease or continue to operate with rent abatement after such interruption has ceased for a time period equal to the time period of such interruption.

23.15 Only Landlord/Tenant Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant. Landlord and Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

23.16 Attorneys' Fees. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

23.17 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such party, and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God, the performance of such covenant, agreement, work, service, or other act shall be excused for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay.

23.18 Confidentiality of Lease. From and after the date lease negotiations were entered into and throughout the Term of this Lease, the parties shall not disclose any of the terms, covenants, conditions or agreements set forth in the letters of intent or in this Lease or any amendments hereto, nor provide such correspondence, this Lease, any amendments hereto or any copies of the same, nor any other information (oral, written or electronic) which is communicated by or on behalf of Tenant or on behalf of Landlord relating to Tenant's proposed development of the Premises (including, without limitation, architectural plans, specifications, site plans and drawings) or Tenant's business, to any person including, without limitation, any brokers, any other tenants in the Building or any affiliates, agents or employees of such tenants or brokers except as set forth herein, without Tenant's written consent or except as ordered by a court with appropriate authority provided Landlord seeks available protective orders. Landlord hereby acknowledges that the disclosure of the foregoing to any third party would cause material damage to Tenant, and Landlord agrees to indemnify, save and hold Tenant harmless from and against any and all damages suffered by Tenant which are attributable to any disclosure by Landlord in violation of the terms of this provision. Notwithstanding the foregoing, Landlord may disclose the terms of this Lease to those of its attorneys, accountants, current or potential mortgagees or purchasers of the Property who agree to be bound by the terms of this Section and Tenant may disclose the terms of this Lease to current or potential lenders, assigns or subtenants who agree to be so bound.

23.19 Brokers. Landlord agrees to pay a brokerage commission to The Palmer Company for services provided in connection with this Lease in accordance with the terms of a separate commission agreement. Except as specifically identified in this Section, Landlord and Tenant each represent to the other that they have not dealt, directly or indirectly, in connection with the leasing of the Premises, with any other broker or person entitled to claim a commission or leasing fees. In no event may this Lease be construed to create any express or implied obligation on the part of Tenant to perform this Lease on behalf of any broker (or any person claiming a commission or leasing fee) as primary obligee or as a third party beneficiary. Landlord and Tenant each shall indemnify and hold each other harmless from any loss, liability, damage, or expense (including without limitation reasonable attorneys' fees) arising from any claim for a commission or leasing fee arising out of this transaction made by any unidentified broker or other person with whom such party has dealt.

23.20 Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, that party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise.

24. QUIET ENJOYMENT. Without limiting any rights Tenant may have by statute or common law, Landlord covenants and agrees that, so long as this Lease is in full force and effect, Tenant shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without disturbance by Landlord or by any person having title paramount to Landlord's title or by any person claiming through or under Landlord.

25. NOTICES. Whenever a provision is made under this Lease for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or

declaration to the other party, it shall be in writing and served either personally or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service, addressed at the addresses set forth below or at such address as either party may advise the other from time to time.

To Landlord at: 7700 South Walker
Oklahoma City, OK 73139

To Tenant at: Starbucks Corporation
Attn: Property Management Department
Mailstop S-RE3

by mail at: P.O. Box 34067
Seattle, WA 98124-1067

or by overnight delivery to: 2401 Utah Avenue South-Suite 800
Seattle, WA 98134

Landlord shall send a duplicate copy of any notice given under Article 14 to the attention of the Law and Corporate Affairs Department at the same address, Mailstop S-LA1.

Notices given hereunder shall be deemed to have been given on the date of personal delivery (or the first business day thereafter if delivered on a non-business day) or three (3) days after the date of certified mailing or the next business day after being sent by overnight courier.

26. EXHIBITS. The following exhibits are attached to this Lease and by this reference are incorporated herein:

Exhibit A - Legal Description
Exhibit B - Site Plan with Diagram of Premises
Exhibit C - Construction Requirements
Exhibit D - Delivery of Possession

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

MIDLAND CAPITAL, LLC
an Oklahoma limited liability company

By *Fariborz Mazaheri*
Fariborz Mazaheri, Manager

TENANT:

By *Michael Malanga*
STARBUCKS CORPORATION,
a Washington corporation

MICHAEL MALANGA
vice president, portfolio strategy
and asset management

Landlord's Federal Tax Identification
Number: 82-054-8680

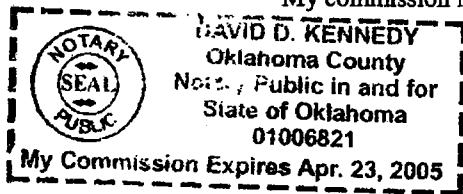
STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

This instrument was acknowledged before me on the 13th day of December, 2004 by Fariborz Mazaheri, Manager of Midland Capital, L.L.C., an Oklahoma limited liability company.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

David D. Kennedy

NOTARY PUBLIC
My commission expires: _____
My commission Number: _____



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 9 day of December, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Michael Malengo, to me known to be the vice president of STARBUCKS CORPORATION, a Washington corporation, the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year this certificate above written.

Pamela J. Shay
NOTARY PUBLIC, in and for the State
of Washington, residing at Seattle
Commission expires: 7/29/07
Print Name: Pamela J. Shay

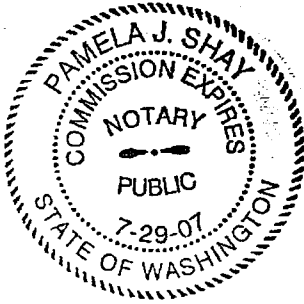


EXHIBIT A

LEGAL DESCRIPTION

TRACT I (Tax Parcel #2848-14-275-2350)

A portion of Lot Ten (10), Block Seven (7), SMITH'S HIGHLAND HILLS ADDITION to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof, and more particularly described as follows: **BEGINNING** at the Northeast corner of Lot Ten (10); Thence **North 79°40'29" West** a distance of **328.0 feet**; Thence **South 25°05'18" West** a distance of **320.82 feet** to a point on the South line of Lot Ten (10); Thence **South 61°44'47" East** a distance of **350.0 feet**; Thence **North 28°15'13" East** a distance of **101.75 feet**; Thence **South 89°55'09" East** a distance of **101.75 feet** to a point on the East line of Lot Ten (10); Thence **North 0°04'51" East** a distance of **307.92 feet** to the point or place of beginning.

AND

TRACT II (Tax Parcel #2848-14-275-2340)

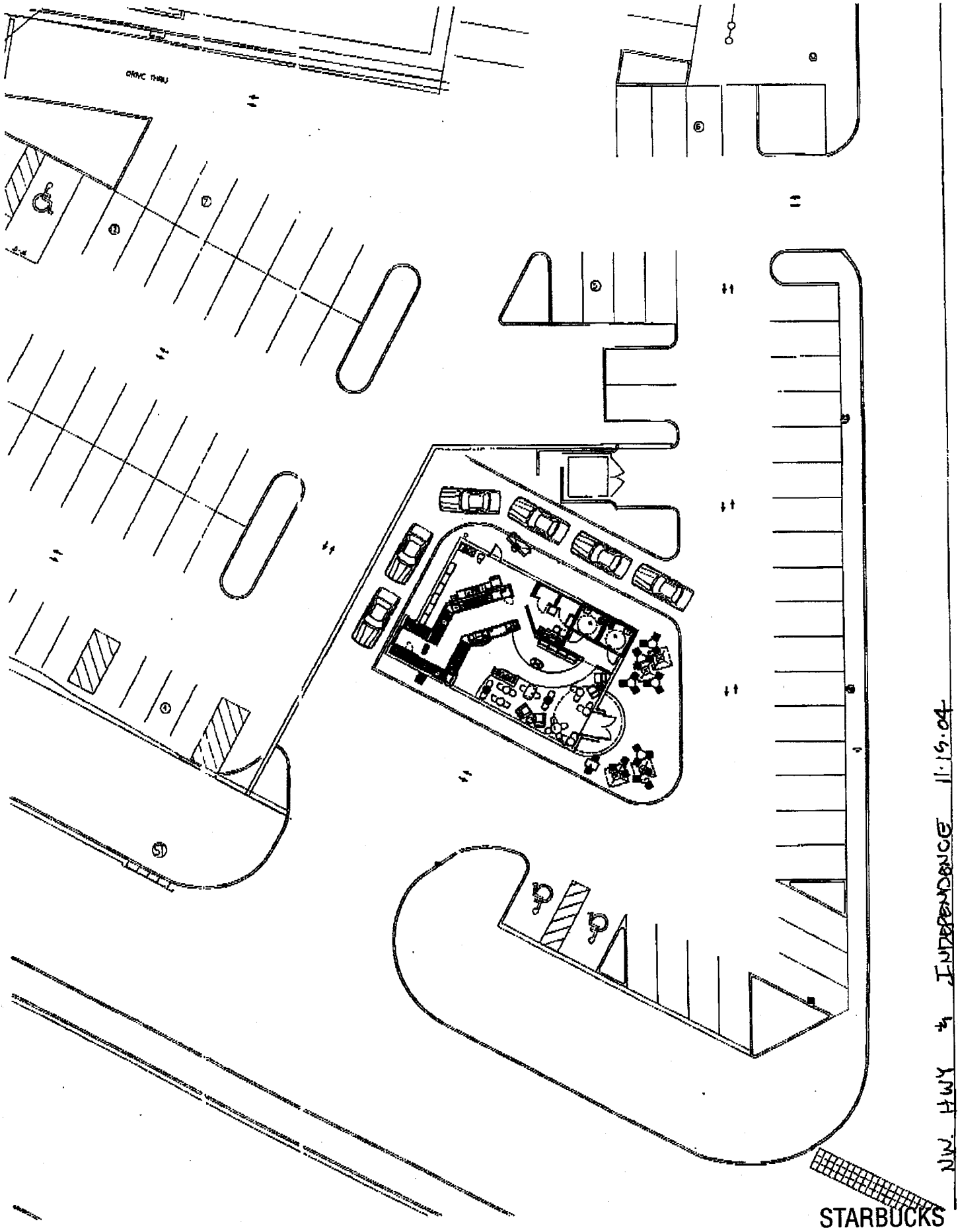
A portion of Lot Ten (10), Block Seven (7), SMITH'S HIGHLAND HILLS ADDITION to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof, and more particularly described as follows: **BEGINNING** at a point on the North line of said Lot 10, said point being located **South 61°41'51" East** from the Northwest corner of said Lot 10, a distance of **272.97 feet**; Thence from said point of beginning **South 61°41'51" East** along said North line of said Lot 10 a distance of **120.23 feet**; Thence **South 79°40'29" East** a distance of **34.64 feet**; Thence **South 25°05'18" West** a distance of **320.82 feet** from the front line of said Lot 10; Thence **North 61°44'47" West** along said front line of Lot 10 a distance of **170.89 feet**; Thence **North 28°15'13" East** a distance of **309.78 feet** to the point or place of beginning.

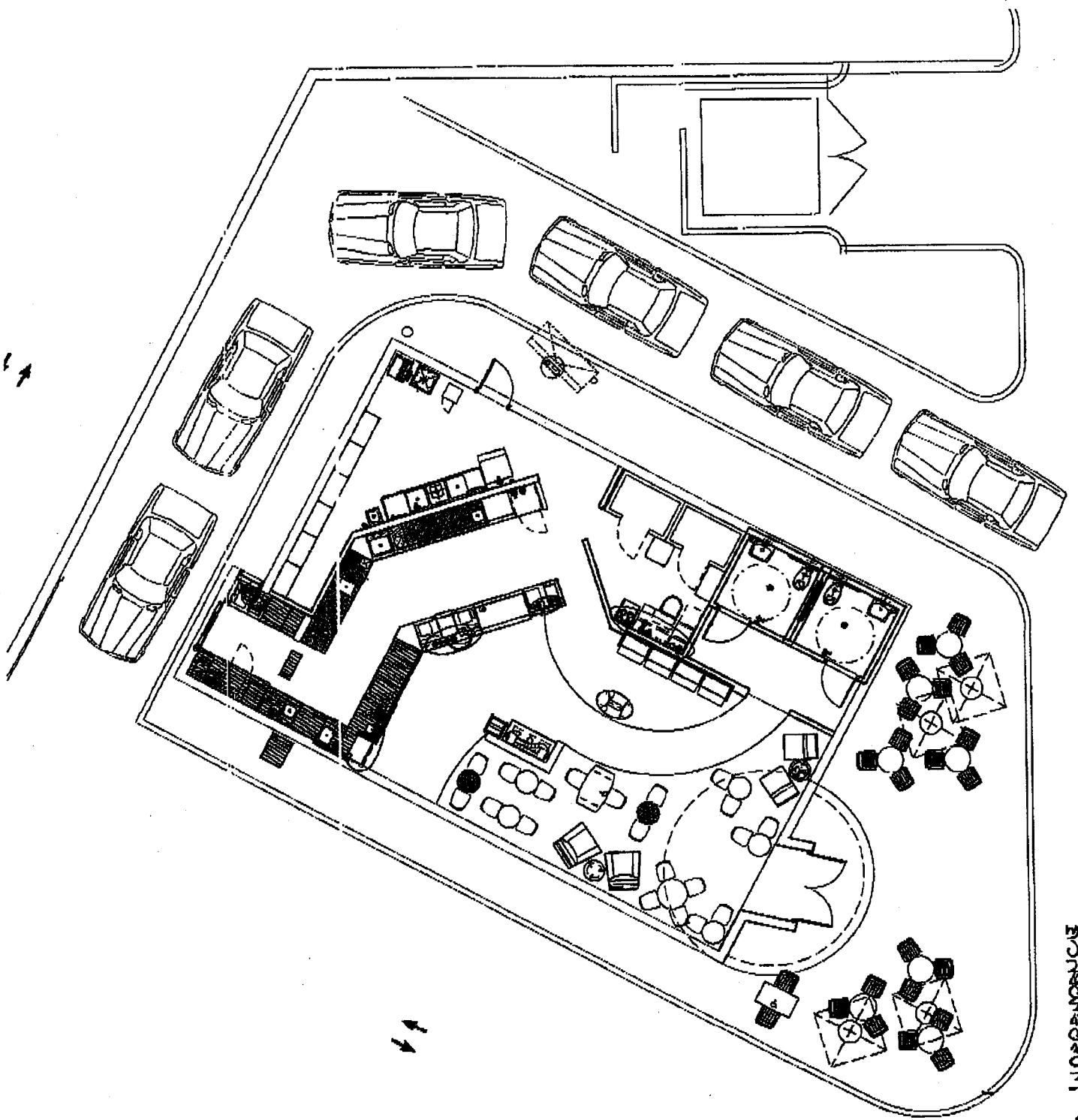
AND

TRACT III (Tax Parcel #2848-14-275-2320)

A tract of land lying in the Northwest Quarter (NW/4) of Section Twelve (12), Township Twelve (12) North, Range Four (4) West of the Indian Meridian, Oklahoma County, Oklahoma, and also being a part of Lot Ten (10), Block Seven (7), SMITH'S HIGHLAND HILLS ADDITION to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof, and being more particularly described as follows: **COMMENCING** at the Northeast corner of said Lot 10; Thence **South 00°04'51" West** along the East line of said Lot 10 a distance of **307.92 feet** to the point of beginning; Thence continuing **South 00°04'51" West** along said East Line a distance of **145.00 feet**; Thence **South 59°10'02" West** a distance of **25.69 feet** to the Northerly right-of-way line of Northwest Highway; Thence **North 61°44'47" West** along said right-of-way line a distance of **145.00 feet**; Thence **North 28°15'13" East** a distance of **101.75 feet**; Thence **South 89°55'09" East** a distance of **101.75 feet** to the point of beginning.

EXHIBIT B
SITE PLAN





STARBUCKS
NW Hwy 4 Independence

EXHIBIT C
CONSTRUCTION REQUIREMENTS

LANDLORD WORKLETTER**EXHIBIT C-1
CONSTRUCTION REQUIREMENTS
AND STANDARDS****1. Landlord Construction**

Landlord's Work to be completed prior to delivering possession of the Premises to the Tenant and in compliance with standard construction practices and all applicable codes.

Landlord will provide the Tenant with a copy of Landlord's construction schedule, including the name, phone number and address of Landlord's contractor and construction manager. The construction schedule must be furnished to the Tenant no later than four (4) weeks prior to Tenant possession date.

Landlord shall provide Tenant with a weekly construction status report. Tenant's construction manager, or its designated representative, may enter upon the Premises during construction of Landlord's Work to inspect progress, take progress photos, and to determine if Landlord's Work is being completed in accordance with Tenant's standards, plans and specifications. Upon the completion of the Landlord's Work, the Tenant shall inspect for compliance to the Lease.

2. Tenant's Completion of Landlord's Work

Landlord's Work shall be completed in accordance with the Lease and Landlord's construction schedule. Tenant shall retain the option to complete Landlord's Work at Landlord's sole expense in the event the Landlord's Work is not completed in accordance with the Lease and Landlord's construction schedule.

3. Parties Obligations Upon Delivery and Possession

Upon delivery of possession of the Premises to Tenant, Tenant shall inspect the Premises to determine whether Landlord's Work has been completed. At this time, Landlord and Tenant shall execute the Delivery of Possession (Appendix B).

EXHIBIT C-2
Description of Landlord Work
 New and/or Existing Construction

CSI #	Scope Category	Detail
02200	Selective Demolition	<ul style="list-style-type: none"> Demolish, remove and legally discard of all prior tenant's improvements including, but not limited to hazardous substances, partitions, ceilings, floor coverings, electrical conduit, plumbing, mechanical ductwork and other fixtures and equipment. Tenant reserves the right to identify real and personal property items to remain prior to demolition. Space shall be left in "broom clean" condition.
02500	Utility Service	<ul style="list-style-type: none"> Provide temporary electrical power to the Premises, if permanent electrical power is not available at time of possession. Provide temporary water, if domestic water is not available at time of possession. Furnish Tenant specified electrical, gas, water and sanitary service to Premises. Distribute utility services under the Premises floor assembly, in accordance with Tenant plans and specifications.
02510	Water Distribution	<ul style="list-style-type: none"> Furnish and install one 1 1/2" (or sized per local code) domestic water (DW) service, separately metered, stubbed via copper piping into the Premises, in accordance with Tenant plans and specifications. The DW service must be capable of providing a minimum operating flow of 30 gallons per minute (gpm); service pressure at 50 psig minimum and 80 psig maximum static pressure; and 40 psig minimum dynamic pressure. If flow rate or pressure is not sufficient, Landlord shall furnish and install a booster pump in a location agreed upon with the Tenant. Furnish and install an RPZ Backflow Preventer, if required by applicable codes, in a location identified on Tenant's plans. The fire protection system and domestic water system may not be supplied from the same service.
02530	Sanitary Sewerage	<ul style="list-style-type: none"> Provide a min. 4" sanitary sewer waste line to the Premises at an elevation suitable to gravity drain, per local code, from any location within the Premises. Septic tanks or similar drainage systems are not acceptable.
02550	Gas Distribution	<ul style="list-style-type: none"> Deliver gas service, per applicable local codes, to a location five (5) feet inside of the Premises. Piping size shall be based on pressure distribution and local availability and shall be coordinated with Tenant's MEP Consultant. This scope of work must include, local utility approved, piping manifold sized and ready to receive utility gas meter.
02580	Site Electrical Distribution	<ul style="list-style-type: none"> Furnish main electrical feeders from utility service point to main panel in Premises; Electrical switch gear service disconnect and distribution to be dedicated for Tenant's use only. Provide a separately metered utility, including the current transformer (CT) block, meter base, distribution panel, meter, properly sized conduit and properly sized lead wire from the utility service point to Tenant's main electrical service panel. Location of the switch gear shall be specified by the Tenant. Service drop from the utility company location providing 400 amp, 120/208 volt 3 phase 4 wire power service connected to Tenant's main electrical panel.

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CSI #	Scope Category	Detail
02580	Site Electrical Distribution (continued)	<ul style="list-style-type: none"> Electrical utilities to be installed using properly sized kva electrical transformer including all electrical meter pans. Furnish and install one 150KVA voltage step down transformer if converting from high voltage to 400 Amps 120/208. Location of transformers shall be per Tenant's plans and specifications. Furnish and install electrical conduits from Tenant's electrical panel to all exterior site signage, including but not limited to directional site signage, monument signs and/or pylon signs in accordance with Tenant's plans and specifications. Furnish and install underground electrical conduits from Tenant's electrical panel to the dedicated monument/pylon sign.
02775	Sidewalks & Patios	<ul style="list-style-type: none"> Provide a minimum of 100 SF Outdoor Seating Area. If seating area is adjacent to vehicular traffic, separate the area from traffic by handrail and/or landscaping. Landlord shall obtain permit for Outdoor Seating if required by applicable code.
03300	Flooring	<ul style="list-style-type: none"> Provide level reinforced concrete slab or wood floor at grade street level, in stable, dry condition. Concrete floor must be smooth, level and properly cured and ready to accept Tenant's floor finishes. Wood flooring must be structurally sound. All flooring must meet applicable dead and live load codes, including but not limited to all applicable building, structural and ADA jurisdictional requirements. The floor structure must have less than 1/64" per foot deflection in order to accept Tenant's floor finishes.
09200	Gypsum Board	<ul style="list-style-type: none"> Provide demised and perimeter walls finished in a paint ready condition (tape, bed & sand). Furnish insulated demising wall, perimeter wall and roof systems which meet all applicable codes. Gypsum wall board (GWB) wall assemblies shall be framed with 6" minimum nominal, 20 gauge studs - 16" o.c., insulated (R-19) and GWB. Tenant's wall side shall be provided with 5/8" Type "X" GWB; fire taped and bedded, plumb and square, ready for Tenant wall finishes from floor to underside of roof deck. Seal top and bottom joists, and all penetrations, airtight with properly rated fire stopping material as per applicable codes. If required by local jurisdictions, and if necessary to secure Tenant's certificate of occupancy, the Landlord shall complete the assembly by finishing the opposite side of the wall according to the applicable code. Gypsum board wall system to meet the 1 hr or 2 hr fire rating, per applicable codes. Alternate wall systems such as Plaster and CMU Block may be used per applicable codes. All perimeter and demised walls must be finished to a paint ready condition.
08100	Metal Doors & Frames	<ul style="list-style-type: none"> Provide a commercial grade exterior rear service door in compliance with all building and fire agencies having jurisdiction. Furnish and install all exterior door hardware as specified by the Tenant.
08400	Storefront Doors	<ul style="list-style-type: none"> Storefront glazing to be clear (non-tinted), thermal insulated, and safety rated. Provide either (a) all entrances at street or walkway level, or (b) entrances in compliance with all applicable codes that meet federal, state, provincial, and local building, life safety, and handicap accessibility codes. Provide door hardware to Tenant's specifications.

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CSI #	Scope Category	Detail
13851	Fire Alarm	<ul style="list-style-type: none"> If required by applicable codes: Permit, furnish and install base building monitoring and fire protection alarm system based on Tenant's plans and specifications. The system shall include audible alarms, visual strobes and pull stations per all applicable codes. Provide all tie-ins to building smoke detectors, flow switch valve, and duct smoke detectors. The system must be programmed and functional.
13900	Fire Protection	<ul style="list-style-type: none"> If required by applicable codes: Furnish a 4" fire main within Tenant space accessible to Premises via a main line connection, including sprinkler coverage (drops and heads) distributed throughout Premises per Tenant's plans and local fire code requirement. The sprinkler system must include flow and tamper devices, fire alarm system disconnects and back flow prevention as required by agencies having jurisdiction. System must be pressure tested, fully operational, inspected and approved by local agencies having jurisdiction.
15400	Plumbing Fixtures & Equipment	<ul style="list-style-type: none"> Furnish and install a 3" diameter vent, from the roof through flashing to a location above the proposed Tenant ceiling in the Premises. Keyed, frost-free recessed exterior hose bib per Tenant's plans and specifications. The hose bib must be connected to 1/2" copper pipe and run to 1'0" below roof deck. It must be exposed and visible for Tenant's connection. If required by applicable codes: Provide a grease interceptor sized and located in accordance with jurisdictional water/waste management board and in the location noted on Tenant's plans.
15500	HVAC	<ul style="list-style-type: none"> Furnish and install HVAC rooftop units [RTU], including all electrical connections, plumbing connections and thermostats/HVAC controls, per Tenant's plans and specifications, manufacturer recommendations and all applicable codes. Provide energy efficient/code compliance calculations with appropriate permit(s). Furnish no less than one ton per 150SF of heating and cooling, no single unit larger than 7.5 tons, subject to Tenant's HVAC plans and specifications. HVAC units to be provided with a barometric relief and economizers. HVAC units with 2000 CFM delivery or greater shall be provided with a duct mounted smoke detector in the return air duct. HVAC system shall be supported per all applicable codes and include an appropriate structural engineering design. Thermostats/HVAC controls shall comply with Tenant's specifications and any/all code requirements (Honeywell T7300 or equivalent); minimum one (1) thermostat for each unit with remote sensors to be located according to Tenant's specifications. If roof-top units cannot be installed, the landlord can provide a chilled water (CHWS/R) loop and hot water (HWS/R) loop system with water supply and return lines stubbed into the Premises. Water must be supplied 24 hours per day, 365 days per year, chilled and heated to maintain the Premises at a temperature between 66 and 72 degrees.
15800	Ductwork	<ul style="list-style-type: none"> Provide all rigid "Hard" ductwork a minimum of 12" in diameter (113 sq.in. cross sectional area) or greater in size; including but not limited to the main HVAC service trunk lines and make up air [MUA]. The Tenant will furnish and install all remaining ductwork and diffusers. Furnish and install motorized dampers, if required by local jurisdiction and/or any applicable codes.

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CSI #	Scope Category	Detail
15800	Ductwork (continued)	• Furnish and install all restroom exhaust ductwork, as defined by Tenant's plans and specifications. The landlord will be responsible for all work required to properly seal around any and all penetrations (including but not limited to roof or exterior wall penetrations).
16210	Electrical Panels	• Furnish and install two (2) each 'Square-D' or equivalent NEMA PB1, Type 1, lockable 400 amp rated panels. All panels shall be recessed mounted, in a location identified by the Tenant. Each electrical panel shall be furnished with 42 poles and breakers per Tenant's specifications.
16500	Lighting	• Furnish and install a security light, per landlord specifications, at exterior rear door at a minimum dimension 10' above finished floor (AFF).
16720	Telephone System	• Furnish and install one (1) each 1- 1/2" conduit with pull string from the building's main point of entry (MPOE) to a service point within the Premises as identified by the Tenant.
02800	Trash Enclosure	• Provide a 25' w x 12' d x 7' h trash enclosure and space inside the enclosure for a 4 yd. waste bin, a 3 yd. cardboard recycling bin, and totes for plastic recycling. The trash enclosure shall be physically located on the property and comply with all applicable codes.
02810	Irrigation Systems	• Furnish and install an irrigation system, which includes a back-flow prevention device and is separately metered.

DRIVE THRU COMPONENTS		
CSI #	Scope Category	Detail
02580	DT - Site Electric Distribution	• Furnish and install all underground electrical conduits, with pull strings, from the electrical panels to the following exterior drive-thru equipment as noted on the Tenant's plans and specifications: 1) one (1) each 1" conduit to "Order" menu board location 2) one (1) each 1" conduit to speaker location 3) one (1) each 1" conduit to illuminated direction signage (Note: there is a maximum requirement of three (3) directional signs per individual 1" conduit.) 4) one (1) each 1" conduit for each two detector loop set
02890	DT - Traffic Signage	• Provide parking lot striping and directional arrows per Tenant's plans and specifications. • Furnish and install a height restrictive bar, as specified and located by Tenant's plans and specifications.
02800	DT - Site Improvement	• Furnish and install all site plan improvements per all jurisdictional requirements and applicable codes. This scope of work includes all necessary variances and/or special exceptions required to obtain drive-thru jurisdictional approvals.

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DRIVE THRU COMPONENTS (continued)		
CSI #	Scope Category	Detail
03300	DT - Site Concrete	<ul style="list-style-type: none"> Furnish and install concrete footings per Tenant's plans and specifications for the following items: <ol style="list-style-type: none"> Order menu board Speaker mount Directional signage Height restriction bar Monument sign Concrete filled Steel Bollards Provide a drive-thru lane constructed of 6" thick, Grade PG 70-22 asphalt cement, with an 18'0" long 6" deep reinforced concrete pad located at the drive-thru window. The width of the pad shall be the width of the drive-thru lane.
08500	DT - Drive-Thru Window	<ul style="list-style-type: none"> Furnish and install the Tenant specified standard drive-thru service window, including stainless steel exterior shelf, located per Tenant's plans.
10535	DT - Awnings	<ul style="list-style-type: none"> Furnish and install an exterior awning above drive-thru window per Tenant's plans and specifications.
16500	DT - Site Lighting	<ul style="list-style-type: none"> Furnish and install two (2) exterior, Tenant specified, lights located adjacent to drive-thru window per Tenant's plans.

Landlord:

MIDLAND CAPITAL, LLC

By: _____

Print Name: _____

Title: _____

Date: _____

Tenant:

STARBUCKS CORPORATION

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT D

DELIVERY OF POSSESSION

Project Name: _____ Store #: _____

Date Possession Tendered: _____

Tenant: Starbucks Corporation

Landlord: _____

Premises Address: _____

Square Footage: _____

Landlord and Tenant acknowledge and agree that the Premises were tendered to Tenant on the Possession Date noted above.

- Landlord's Work is complete and accepted by Tenant, subject to the terms and conditions of the Lease regarding latent defects and completion of punchlist items.
- Although the items of Landlord's Work indicated below are not complete, Tenant hereby accepts possession of the Premises and elects to complete the unfinished items at Landlord's expense, subject to the terms and conditions of the Lease.
- Tenant hereby refuses possession of the Premises because the items of Landlord's Work indicated below are not complete.

Incomplete items of Landlord's Work: _____

[Attach additional pages if needed]

From and after the date hereof, all notices should be delivered to Tenant at the address set forth in Section 25 of the Lease.

Landlord:

Tenant:

Print Name: _____

Print Name: _____

Title: _____

Title: Construction Manager

Date: _____

Date: _____